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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8575 of 2007

Kulkarni Printing and Packaging
Pvt.Ltd. ...Petitioner

V/s.

Maharashtra Shramik Sanghatana ...Respondents

Mr.Rajesh S.Datar for the Petitioner

CORAM : B.H.MARLAPALLE,J.
DATED : 13th December, 2007

P.C.

Heard Mr.Datar, the Learned Counsel for the Petitioner Company.

2. The Respondent Union had approached the Labour Court by filing Comp(ULP) No. 355/2002 on behalf of the workman concerned employed by the Petitioner Company alleging unfair labour practices under item 1 of Schedule IV of the MRTU & PULP Act, 1971 (the Act for short) w.e.f 16-11-2002. It was alleged that the workman Shri Santosh Kumar Mishra was employed by the company as a Warnish Operator and his last drawn salary was Rs. 2,985/- p.m. He was not issued any appointment order, attendance card and was made to work for 12 hours and that too without paying any overtime. The workman had reported for duty on 16-11-2002 after availing 21

days leave but he was not allowed to report for duty. By way of interim-relief the Labour Court had directed the said workman to be reinstated and accordingly he was to report for duty on 4-2-2003 but after 6-2-2003 onwards he was again not allowed to report for duty and thus there was illegal termination of service.

3. The Company in defence stated that there was no termination of service at its hands and infact the workman himself had remained absent without permission and consequently had abandoned the employment. The Labour Court held that there was no evidence brought on record that the management had taken any action on account of the alleged abandonment of service or continuous absence from duty. The Company examined one Shri Nitin Pandurang Patil as CW1 and the union examined Santosh Kumar as UW1. It also filed on record letter dated 25-11-2002 addressed by it to the Company as well as the concerned newspaper i.e. "Lokmat" dated 25-10-2002. The Complainant had also filed other documents alongwith the Exhibit 27 whereas the Respondent company filed documents at Exh.15, Exh.24, Exhibit 34 and Exhibit 39. The Union also in addition filed documents at list Exhibit 34.

4. The evidence tends to show that there were in all 40 workmen in the company and it was manufacturing

boxes. None of the workers were issued any appointment order, attendance card or any wage slip. They were being continued on duty continuously for more than 10 hours and without any overtime. The Labour Court considered the evidence of both the parties and the rival submissions made before it and recorded a finding that there was no abandonment of service by Shri Mishra or any of the workmen and on the other hand, the workmen were terminated illegally by the company. Therefore, the Labour Court by its Judgement and order dated 17-3-2006 allowed the complaint, gave a declaration that the company had engaged in acts of unfair labour practices under item no. 1 of Schedule IV in terminating the services of the workmen orally and the company was directed to reinstate the concerned workman with full backwages and continuity of service w.e.f. 16-11-2002.

5. This order was challenged in Revision Application(ULP) No.48/2006 and the Learned Member of the Industrial Court on perusal of the record called from the Labour Court agreed with the reasoning set out insupport of the impugned order. Mr.Datar, the Learned Counsel for the Petitioner Company submitted that the workman concerned had worked on 4th and 5th February, 2003 and thereafter he just disappeared and to the same effect, the company has placed on record of the Labour

Court a purshis. Purshis is not an evidence. It was necessary for the company to prove that the workman concerned had infact abandoned the service by remaining absent continuously on the basis of documentary as well as oral evidence. The evidence adduced by the parties was duly considered by the Labour Court and the Industrial Court once again went through the same and concurred with the findings of the Labour Court holding that the workmen concerned were illegally terminated and the contentions that they had abandoned service could not be upheld.

6. The concurrent findings recorded by both the Courts below against the Petitioner Company holding that it engaged in acts of unfair labour practice by orally terminating the services of the workman cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution.

Petition is rejected summarily.

[B.H.MARLAPALLE,J.]